

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>		1. CONTRACT ID CODE		PAGE OF PAGES 1 6	
2. AMENDMENT/MODIFICATION NO. 0002		3. EFFECTIVE DATE 22 NOVEMBER 2002		4. REQUISITION/PURCHASE REQ. NO. SP0600-02-00917	
5. PROJECT NO. (If applicable)		6. ISSUED BY CODE SP0600		7. ADMINISTERED BY (If other than Item 6) CODE	
DEFENSE ENERGY SUPPORT CENTER (DESC-MK) BLDG 1621-K 2261 HUGHES AVE/STE 128 LACKLAND AIR FORCE BASE TX 78236-9828  BUYER: ELLEN SHANNON//210-925-2124 (eshannon@desc.dla.mil)		SAME AS BLOCK 6			
8. NAME AND ADDRESS OF CONTRACTOR (No. Street, county, State and ZIP: Code)				<input checked="" type="checkbox"/> 9A. AMENDMENT OF SOLICITATION NO. SP0600-03-R-0302 <input checked="" type="checkbox"/> 9B. DATED (SEE ITEM 11) 28 OCT 2002 10A. MODIFICATION OF CONTRACT/ORDER NO. 10B. DATED (SEE ITEM 13)	
CODE 2B853		FACILITY CODE			
<b>11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS</b>					
<input checked="" type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input checked="" type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning one (1) copy of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATA SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and data specified.					
12. ACCOUNTING AND APPROPRIATION DATA (If required)					
<b>13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.</b>					
<input checked="" type="checkbox"/> A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A. <input type="checkbox"/> B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b). <input type="checkbox"/> C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: <input type="checkbox"/> D. OTHER Specify type of modification and authority)					
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return _ _ copies to the issuing office.					
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) <b>SEE PAGES 2 THROUGH 6</b>					
xcent at provided herein. all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.					
15A. NAME AND TITLE OF SIGNER (Type or print)			16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)		
			LARRY A. BREHM		
15B. CONTRACTOR/OFFEROR		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA	
				16C. DATE SIGNED	
(Signature of person authorized to sign)		BY		(Signature of Contracting Officer)	

**CONTINUED FROM BLOCK 14, PAGE 1:**

A. Paragraph 2 of the Statement of Objectives is deleted in its entirety and replaced with the following:

2. The Government shall order product by issuance of delivery orders by the DESC Contracting Officer. Product shall be produced and available for delivery into Government-provided conveyances within fifteen (15) calendar days from the date of the order unless a date beyond 15 days is otherwise stated on the delivery order. It is critical that all of DESC's customers – DOD, Federal Civilian, and commercial space – through aggregate orders placed by DESC, have a reliable and dependable supply of JP-10/PF-1. To ensure this reliable supply of JP-10/PF-1 DESC shall pay for the facility upgrade to produce these products under CLIN 0001AA. Any sales of JP-10/PF-1 beyond those to DESC shall be coordinated in advance with the DESC Contracting Officer, who shall negotiate a reduction in the unit price of CLINs 0002, 0003, and/or 0004 as consideration for the use of facility upgrades of which the Government reimbursed 100 percent to the contractor.

B. To assist contractors in sizing their production facility, a listing of the historical requirements and the Government's estimated future requirements are attached at page 3.

C. Clause I1.03-1 Contract Terms and Conditions – Commercial Items (Dec 2001) is hereby replaced by Contract Terms and Conditions – Commercial Items (Feb 2002). The full text of the revised clause I1.03-1 is attached at pages 4 and 5.

D. The FAR Clause at 52.225-1 Buy American Act – Balance of Payments Program – Supplies (Feb 2000) is hereby incorporated by reference into the solicitation.

E. DESC Clause K15 Release of Unit Prices (DESC Oct 2002) is attached and incorporated in its entirety to the solicitation. The clause is attached at page 6.

F. In the Statement of Objectives, Section (c) of Para. 12 Submission of Invoices for Payment of Product is changed from seven to three years. In accordance with paragraph (d) of Clause I1.04 Contract Terms and Conditions Required to Implement Statutes or Executive Orders- Commercial Items, contractor must maintain the hard copy receiving report for a period of three years after final payment.

G. The date and time established for a receipt of offers (block 8 of the SF1449) is hereby extended to 03 December 2002.

**JP10 Requirements**

	Historical:									
	FY98		FY99		FY00		FY01		FY02	
	DRUMS*	BULK GLS	DRUMS*	BULK GLS	DRUMS*	BULK GLS	DRUMS*	BULK GLS	DRUMS*	BULK GLS
October	1	0	67	11000	45	5000	0	6000	34	10000
November	0	5000	4	6000	0	0	2	6000	0	8000
December	0	12000	3	12000	86	6000	0	0	0	9000
January	50	10000	0	5000	0	6000	83	22000	6	10000
February	20	6000	22	6000	19	0	26	6000	1	6000
March	0	12000	42	17000	82	17000	36	0	0	44000
April	40	23000	2	12000	114	0	21	6000	5	4000
May	0	24000	2	11000	28	0	0	8000	1	0
June	5	23000	0	0	0	8000	5	6000	14	0
July	34	6000	8	0	81	0	2	6000	0	4000
August	0	11000	23	11000	6	6000	0	10000	0	0
September	0	12000	12	0	5	5600	6	8000	0	11000
TOTAL	150	144000	185	91000	466	53600	181	84000	61	106000

\* 1 Drum = 54 gallons

	Estimated:					
	FY03		FY04		FY05	
	DRUMS*	BULK GLS	DRUMS*	BULK GLS	DRUMS*	BULK GLS
October	42	11000	9	10000	18	10000
November	45	0	8	0	16	4000
December	0	10000	14	10000	20	11000
January	2	4000	14	5000	23	9000
February	0	10000	10	10000	19	13000
March	123	0	17	0	23	4000
April	2	15000	15	14000	21	17000
May	2	0	15	0	21	4000
June	10	10000	15	12738	21	33000
July	0	4000	13	5000	19	9000
August	0	10000	13	10000	19	13000
September	25	4000	22	4000	25	11000
TOTAL	251	78000	165	80738	245	138000

**II.03-1 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (FEB 2002)**

(a) **INSPECTION/ACCEPTANCE.** The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) **ASSIGNMENT.** The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes a payment (e.g., use of the Government-wide commercial purchase card), the Contractor may not assign its right to receive payment under this contract.

(c) **CHANGES.** Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) **DISPUTES.** This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, DISPUTES, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) **DEFINITIONS.** The clause at FAR 52.202-1, DEFINITIONS, is incorporated herein by reference.

(f) **EXCUSABLE DELAYS.** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) **INVOICE.** The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include--

- (1) Name and address of the Contractor;
- (2) Invoice date and number;
- (3) Contract number, contract line item number, and, if applicable, the order number;
- (4) Description, quantity, unit of measure, unit price, and extended price of the item delivered;
- (5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on

Government bill of lading;

- (6) Terms of any prompt payment discount offered;
- (7) Name and address of official to whom payment is to be sent; and
- (8) Name, title, and phone number of person to be notified in event of defective invoice.

(9) **Taxpayer Identification Number (TIN).** The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(10) **Electronic funds transfer (EFT) banking information.**

(i) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(ii) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer - Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer - Other Than Central Contractor Registration), or applicable agency procedures.

(iii) EFT banking information is not required if the Government waived the requirement to pay by EFT.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) **PATENT INDEMNITY.** The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) **PAYMENT.** Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and OMB prompt payment regulations at 5 CFR part 1315. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purposes of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(j) **RISK OF LOSS.** Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon--

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) **TAXES.** The contract price includes all applicable Federal, State, and local taxes and duties.

(l) **TERMINATION FOR THE GOVERNMENT'S CONVENIENCE.** The Government reserves the right to terminate this contract, or any part thereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms and conditions of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) **TERMINATION FOR CAUSE.** The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) **TITLE.** Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) **WARRANTY.** The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) **LIMITATION OF LIABILITY.** Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) **OTHER COMPLIANCES.** The Contractor shall comply with all applicable Federal, State, and local laws, executive orders, rules, and regulations applicable to its performance under this contract.

(r) **COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS.** The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327 et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986, 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistle blower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) **ORDER OF PRECEDENCE.** Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services;
- (2) The Assignments; Disputes, Payments; Invoices; Other Compliances; and Compliance with Laws Unique to Government Contracts paragraphs of this clause;
- (3) The clause at 52.212-5;
- (4) Addenda to this solicitation or contract, including any license agreements for computer software;
- (5) Solicitation provisions if this is a solicitation;
- (6) Other paragraphs of this clause;
- (7) Standard Form 1449;
- (8) Other documents, exhibits, and attachments; and
- (9) The specification.

(FAR 52.212-4)

**K15 RELEASE OF UNIT PRICES (DESC OCT 2002)**

The Defense Energy Support Center (DESC) will continue to release unit prices of successful offerors after the contract award pursuant to 10 U.S.C. 2305(g)(2), FAR 15.606(d)(2) and 32 CFR 286h-3. Unit prices are the bottom-line price per unit of product and may include the total contract price. They do not include any breakout of costs, such as transportation or overhead, and do not disclose the offeror's anticipated profit or any pricing factors.

(DESC 52.224-9F25)